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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Ford Motor Company  
St. Paul, Minnesota

Respondent

'99 MAR 31 P3:31

DOCKET No. CAA-5-99-011

**ADMINISTRATIVE COMPLAINT**

**GENERAL ALLEGATIONS**

1. This is a civil administrative action instituted pursuant to Section 113(d) (1) of the Clean Air Act ("Act"), 42 U.S.C. § 7413(d) (1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (the "Administrator's Rules"), specifically 40 C.F.R. § 22.13.
2. The Director of the Air and Radiation Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), is, by lawful delegation, the Complainant.
3. The Respondent is Ford Motor Company ("Respondent"), which is and was at all times relevant to this Complaint, a corporation that, among other things, engages in the business of truck and automobile manufacture and operates under the laws of the State of Minnesota.
4. Respondent operates an automobile assembly plant at 966 South Mississippi River Road, St. Paul, Minnesota ("the facility"), and maintains its offices and mailing address at the same address.
5. At the facility, Respondent operates coating dip and spray lines which are sources of volatile organic compounds and hazardous air pollutants.

6. At the facility, Respondent operates capture systems, carbon adsorption systems, and incinerators to control the emissions of volatile organic compounds and hazardous air pollutants.
7. Respondent is a "person", as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
8. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit to U.S. EPA, for approval, a State Implementation Plan (SIP) for, among other things, the implementation, maintenance and enforcement of the National Ambient Air Quality Standards (NAAQS) within each State.
9. On August 10, 1993, U.S. EPA approved Minn. R. 7007.0150 as part of the federally enforceable Minnesota SIP. 60 Fed. Reg. 27411.
10. Pursuant to Minn. R. 7007.0150, no person may construct, modify, reconstruct, or operate an emissions unit, emission facility, or stationary source except in compliance with an air emission permit from the Minnesota Pollution Control Agency ("MPCA").
11. MPCA issued an air emission permit ("permit") to Respondent on June 26, 1991, pursuant to the Minnesota SIP and Section 110 of the Act, 42 U.S.C. § 7410.
12. Pursuant to Minn. R. 7007.0450, if the owner or operator of a stationary source has submitted a timely and complete application for reissuance of a permit, the permit shall not expire until the MPCA has issued a new permit or denied reissuance of the permit.

13. On June 5, 1995, pursuant to Title V of the Clean Air Act Amendments of 1990, Respondent submitted to the MPCA a timely and complete application for a new air emissions permit for the facility.
14. On April 22, 1998, representatives of U.S. EPA inspected Respondent's facility to determine its compliance with the Act.
15. On September 28, 1998, pursuant to Section 113 of the Act, 42 U.S.C. § 7413, U.S. EPA issued a Notice of Violation to Respondent identifying the violations addressed in this complaint.
16. On October 26, 1998, representatives of U.S. EPA met with representatives of Respondent to discuss informally the Notice of Violation.
17. On November 6, 1998, pursuant to Section 114 of the Act, 42 U.S.C. § 7414, U.S. EPA issued a Request for Information to Respondent.
18. On January 12, 1999, U.S. EPA received Respondent's written response to the November 6, 1998, Request for Information.

**COUNT I - FAILURE TO REPORT**

19. Paragraphs 1 through 18 are incorporated here by reference.
20. The permit requires reporting to MPCA as follows:
  - IV.D. The Permittee shall compile and report on a quarterly basis every 3-hour period during which the average temperature in each incinerator (P29, P34, P35, P38 and P47, A40 and A41) is more than 28 degrees C less than the average temperature during the most recent control device performance test at which the destruction efficiency was determined. Reports shall be submitted each quarter regardless of the lack of incidents.
21. The average temperature during the most recent performance test at which destruction efficiency was determined for the carbon wheel incinerator, is 1411° F.

22. As set forth in Attachment A, on at least six 3-hour periods Respondent operated its carbon wheel incinerator at more than 28 degrees C less than the average temperature during the most recent control device performance test.
23. As set forth in Attachment A, on at least six occasions Respondent did not include in its quarterly reports to MPCA three-hour periods where it operated its carbon wheel incinerator at more than 28 degrees C less than the average temperature during the most recent control device performance test.
24. Respondent's failure to report, as set forth in paragraph 23, violates condition IV.D. of the permit and Minnesota R. 7007.0150 and, therefore, Respondent is liable for civil penalties of up to \$27,500 per day of violation, to be assessed by the Administrator under authority of Section 113(d) of the Act, 42 U.S.C. § 7413(d) and 40 C.F.R. Part 19.

#### **PROPOSED CIVIL PENALTY**

Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty by the Administrator of up to \$25,000 per day for each violation of Section 113 of the Act which occurs prior to January 31, 1997 and \$27,500 per day for each violation of Section 113 of the Act which occurs on or after January 31, 1997. The Administrator's authority is limited to matters where the total penalty sought does not exceed \$200,000 (\$220,000 on or after January 31, 1997) and the first alleged date of violation occurred no more than 12 months prior the initiation of the administrative action.

Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), requires that, in determining the amount of penalty to assess, the Administrator "shall take into consideration (in addition to such other factors as justice may require) the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation."

After consideration of the factors set forth at Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), and the facts alleged in the complaint, the Complainant proposes that Respondent be assessed a civil penalty of \$55,000.

Complainant determined this amount of civil penalty based upon an analysis of the evidence now known to Complainant, relevant to the alleged violations and to the statutory penalty criteria, in consideration of the statutory penalty criteria and "The Clean Air Act Stationary Source Civil Penalty Policy," issued October 25, 1991 ("the Policy"), a copy of which is enclosed with this Administrative Complaint. See 40 C.F.R. §§ 22.14(c) and 22.27(b).

Specifically, pursuant to the Act, in consideration of the seriousness of the violations, Complainant has considered the air quality status of the area in which Respondent's facility is located. Respondent's facility is located in an area designated as unclassified for ozone. 40 C.F.R. Part 81. Further, Complainant has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations are

listed in Attachment A and comprise at least nine days of violation.

Complainant also considered the importance of the cited permit conditions to achieving the goals of the Act and its implementing regulations. These cited permit conditions are important because they require the submittal of information necessary for determining compliance with Respondent's emission limits. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.

Further, pursuant to the Act, Complainant has considered the size of Respondent's business in determining the penalty. Respondent's net worth, as determined from a report prepared by Dun & Bradstreet financial information service on September 30, 1997, is \$21,558,000,000. Accordingly, the proposed penalty includes a component which is based on the size of Respondent's business.

Further, pursuant to the Act, Complainant has considered Respondent's compliance history and its good faith efforts to comply. Because Complainant is aware of no prior citations against Respondent for violations of environmental statutes, Complainant has not enhanced the proposed penalty based on this factor.

Further, pursuant to the Act, Complainant has considered the economic impact of the penalty on Respondent's business. Based on the best information available to Complainant at this time, including the September 30, 1997, Dun & Bradstreet report, the proposed penalty of \$55,000 reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

Complainant developed the penalty proposed in this complaint based on the best information available to U.S. EPA at this time. Complainant may adjust the proposed penalty if Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

The Respondent may pay the civil penalty by certified check or cashier's check, payable to "Treasurer, the United States of America," by sending such payment to:

U.S. Environmental Protection Agency, Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

The Respondent shall identify on the check the name of the case and the docket number, and transmit the check with a cover letter. Simultaneous with the posting of the payment of the check at the above address, the Respondent shall send copies of both the check and the transmittal letter to the following [two] addressees:

Regional Hearing Clerk  
Planning and Management Division (M-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Richard Murawski  
Assistant Regional Counsel  
Office of Regional Counsel (CA-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **NOTICE OF OPPORTUNITY FOR A HEARING**

Section 113(d) (2) (A) of the Act, 42 U.S.C. § 7413(d) (2) (A), provides that any civil penalty assessed by the Administrator shall be "by an order made

after opportunity for a hearing on the record in accordance with Sections 554 and 556 of [the Administrative Procedure Act ("APA")].” Consequently, you have the right to request a hearing regarding the Administrative Complaint, and the right to challenge the assessment of the civil penalty proposed in the Administrative Complaint. Any pre-hearing matter and hearing that may occur will be governed in accordance with the provisions of the APA, 5 U.S.C. §§ 551 et seq., and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 ("the Administrator's Rules"). A copy of the Administrator's Rules accompanies this Administrative Complaint.

If you wish to avoid being found in default, you must file a written answer to the Administrative Complaint with the Regional Hearing Clerk (R-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 days of service of this Complaint. 40 C.F.R. § 22.15(a). The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Administrative Complaint with respect to which Respondent has any knowledge,<sup>4</sup> or, where Respondent has no knowledge of a particular factual allegation, so state. 40 C.F.R. § 22.15(b). 40 C.F.R. § 22.15(b) also requires that the Answer must state:

1. The circumstances or arguments that you allege constitute the grounds of defense; and
2. The facts that you intend to place at issue; and
3. Whether you request a hearing.



Your failure to admit, deny or explain any material factual allegation in the Administrative Complaint will constitute an admission of the allegation. 40 C.F.R. § 22.15(d). You should further note that the Administrator's Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer." 40 C.F.R. § 22.15(c).

A copy of the Answer, and any subsequent documents filed by Respondent in this action, should be sent to Richard Murawski, Assistant Regional Counsel, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Mr. Murawski may be telephoned at (312) 886-6721.

Notwithstanding any request you may make for a hearing, if you fail to file an answer within 30 days of your receipt of this Administrative Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. 40 C.F.R. § 22.15(a). Issuance of this Default Order will constitute a binding admission of all facts alleged in the Administrative Complaint and a waiver of your right to a hearing. The civil penalty proposed in this Administrative Complaint shall then become due and payable, without further proceedings, sixty (60) days after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17(a). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. U.S. EPA will impose a late payment handling charge of \$15.00 after thirty (30) days, with an additional charge of

\$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, U.S. EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

**SETTLEMENT CONFERENCE**

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Richard Murawski, Office of Regional Counsel, United States Environmental Protection Agency, Region 5, (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Murawski at (312) 886-6721.

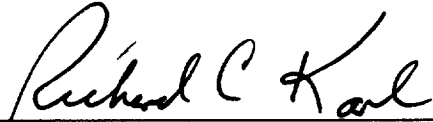
Your request for an informal settlement conference does not extend the twenty (20) day period during which you must submit a written Answer and Request for Hearing. You may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written Consent Agreement and Consent Order issued by the Regional Administrator, U.S. EPA, Region 5. The issuance of a Consent Agreement and Consent Order shall constitute a waiver of your right to request a hearing on any stipulated matter in the Agreement.

Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act, 42 U.S.C. § 7401 et seq., or any other Federal, State, or local law or regulation.

3-31-99

Date

  
Richard C. Karl, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
Chicago, Illinois 60604-3590

In the Matter of Ford Motor Company

Docket No. CAA-5-99-011

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 1999, the original of the foregoing Complaint and Notice of Opportunity for Hearing on Proposed Administrative Order Assessing Penalties was hand-delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that a correct copy along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) was mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Ernesto Gonzalez, Branch Manager  
Ford Motor Company  
966 South Mississippi River Blvd.  
St. Paul, Minnesota 55116-1888

3/31/99  
Date

Shwanda Mayo  
Shwanda Mayo, Secretary  
AECAS (MN-OH)

P300 759 736  
Certified Mail No.

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